**8.8 Assault Resulting in Serious Bodily Injury**

**(18 U.S.C. § 113(a)(6))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with assault resulting in serious bodily injury in violation of Section 113(a)(6) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant assaulted [*name of victim*] by intentionally [[striking] [wounding]] [him] [her];

Second, as a result, [*name of victim*] suffered serious bodily injury; and

Third, the assault took place on [*specify place of federal jurisdiction*].

“Serious bodily injury” means bodily injury that involves (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of a body part, organ, or mental faculty.

**Comment**

*See* Comment to Instruction 8.1 (Assault on Federal Officer or Employee) concerning general intent.

The definition of “serious bodily injury” in the last paragraph of the instruction is the statutory definition in 18 U.S.C. §§ 113(b)(2) and 1365(h)(3).

Proof of battery supports conviction of assault. *United States v. Lewellyn*, 481 F.3d 695, 697 (9th Cir. 2007).

At common law, criminal battery is shown if the defendant’s conduct is reckless. *United States v. Loera*, 923 F.2d 725, 728 (9th Cir. 1991). A defendant can be convicted of assault resulting in serious bodily injury if a battery is proved.